

4584

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sens. SERRANO, HASSELL-THOMPSON, LITTLE, MONTGOMERY, MORAHAN, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the education law, in relation to the deaccessioning of property by museums; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby finds and  
2 determines that the state of New York has the finest museums in the  
3 world, giving the people of the state and visitors an unequalled opportu-  
4 nity to experience the world's cultural, artistic, historical, natural  
5 history and scientific heritage. These museums exist across the state,  
6 range in size from the smallest to the largest institutions in the  
7 world, and are all creatures of state government. Some are directly  
8 chartered by the legislature, and some by the board of regents, but all  
9 are subject to the public interest as set forth in law, regulation,  
10 charter requirement, and sound museum practice as set forth by museum  
11 associations and accreditation organizations. The state's museums have  
12 been exemplary in abiding by and protecting the public interest.

13 The legislature further finds and determines that there is a need for  
14 clarification and standards with respect to the ways museums acquire,  
15 hold, and dispose of property, especially property that is part of their  
16 collections. The need for such improvement in state policy and practice  
17 is of long-standing concern, but has been highlighted by the recent and  
18 widely discussed increase in financial pressure on cultural insti-  
19 tutions. The legislature notes attempts in New York and elsewhere to  
20 monetize museum collections and the asserted use of those monies for  
21 purposes other than the protection and expansion of collections. The  
22 legislature further finds and determines that such practices are incon-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD10608-01-9

1 sistent with the interest of the people of the state, are inconsistent  
2 with requirements of governing documents, accreditation standards, and  
3 accepted museum practices, and, if unchecked, will permanently endanger  
4 the integrity and existence of museum collections handed to us by earli-  
5 er generations as a sacred cultural and ethical trust.

6 The legislature therefore finds and declares that the requirements of  
7 this law are necessary to protect the cultural, artistic, historical,  
8 and scientific heritage of the state, and the public interest, are  
9 consistent with long-standing professional standards set forth by the  
10 museum community, and are consistent with the statutory and constitu-  
11 tional responsibilities of the legislature and the board of regents.

12 S 2. The education law is amended by adding a new section 233-aaa to  
13 read as follows:

14 S 233-AAA. ACCESSION AND DEACCESSION OF PROPERTY. 1. FOR THE PURPOSES  
15 OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

16 (A) "MUSEUM" MEANS ANY INSTITUTION HAVING COLLECTING AS A STATED  
17 PURPOSE IN ITS CHARTER, CERTIFICATE OF INCORPORATION, OR OTHER ORGANIZ-  
18 ING DOCUMENTS, OR OWNING OR HOLDING COLLECTIONS, OR INTENDING TO OWN OR  
19 HOLD COLLECTIONS THAT IS A GOVERNMENTAL ENTITY, EDUCATION CORPORATION,  
20 NOT-FOR-PROFIT CORPORATION, OR CHARITABLE TRUST.

21 (B) "ACCESSIONING" MEANS THE PLACEMENT OF AN ITEM INTO A MUSEUM'S  
22 COLLECTION AND ON ITS COLLECTION REGISTER FOLLOWING PROCEDURES THAT ARE  
23 SET FORTH IN THE MUSEUM'S COLLECTION MANAGEMENT POLICY AND MISSION  
24 STATEMENT.

25 (C) "DEACCESSIONING" MEANS THE REMOVAL OF AN ITEM FROM A MUSEUM'S  
26 COLLECTION AND ITS COLLECTION REGISTER FOLLOWING PROCEDURES THAT ARE SET  
27 FORTH IN THE MUSEUM'S COLLECTION MANAGEMENT POLICY AND CONSISTENT WITH  
28 ITS MISSION STATEMENT.

29 (D) "DISPOSAL" MEANS THE REMOVAL OF AN ITEM FROM A MUSEUM'S OWNERSHIP  
30 BY MEANS OF ITS SALE, DESTRUCTION, TRANSFER, LEASE, GIFT OR ANY OTHER  
31 MEANS.

32 (E) "MISSION STATEMENT" MEANS A STATEMENT APPROVED BY THE MUSEUM'S  
33 GOVERNING BODY, WHICH IS MODELED ON, DERIVED FROM AND CONSISTENT WITH  
34 THE MUSEUM'S CORPORATE PURPOSES AS SET FORTH IN ITS CHARTER, CERTIFICATE  
35 OF INCORPORATION OR OTHER ORGANIZING DOCUMENT THAT IDENTIFIES ITS  
36 PURPOSES, BENEFITS, ACTIVITIES AND PRACTICES.

37 (F) "COLLECTION MANAGEMENT POLICY" MEANS A STATEMENT APPROVED BY THE  
38 MUSEUM'S GOVERNING BODY AND ADMINISTERED BY ITS BOARD, OFFICERS, EMPLOY-  
39 EES, AND CONSULTANTS WHICH INCLUDES ALL POLICIES AND PRACTICES RELATED  
40 TO THE PRESERVATION, ACCESSIBILITY, AND USE OF THE MUSEUM'S COLLECTIONS  
41 AND ASSOCIATED DATA, INCLUDING LOAN MANAGEMENT, COLLECTION GROWTH AND  
42 REFINEMENT; METHODS OF ACCESSIONING, DEACCESSIONING, AND DISPOSAL; PLAN-  
43 NING AND ESTABLISHING COLLECTION PRIORITIES; OBTAINING, ALLOCATING, AND  
44 MANAGING RESOURCES, COORDINATING COLLECTION PROCESSES WITH THE NEEDS OF  
45 CURATION, PRESERVATION, COLLECTION USE; AND A PUBLIC REGISTER OF ACCES-  
46 SIONED ITEMS, WHICH IS MODELED ON, DERIVED FROM AND CONSISTENT WITH THE  
47 MUSEUM'S MISSION STATEMENT.

48 (G) "COLLECTION" MEANS THE TANGIBLE OR INTANGIBLE THINGS OWNED AND  
49 ACCESSIONED BY A MUSEUM, INCLUDING THINGS THAT ARE GENERATED BY VIDEO,  
50 COMPUTER OR SIMILAR MEANS OF PROJECTION AND DISPLAY, INCLUDING CONCEPTS,  
51 THAT HAVE INTRINSIC HISTORICAL, ARTISTIC, CULTURAL, SCIENTIFIC, NATURAL  
52 HISTORY OR OTHER VALUE.

53 (H) "ITEM" MEANS AN INDIVIDUAL ELEMENT OF A COLLECTION.

54 (I) "REFINEMENT" MEANS CHANGING THE ITEMS IN A MUSEUM'S COLLECTION IN  
55 ORDER TO FULFILL ITS MISSION STATEMENT AND COLLECTIONS MANAGEMENT POLI-  
56 CY.

1 2. EACH MUSEUM SHALL DEVELOP, ADOPT AND PUBLISH A COLLECTION MANAGE-  
2 MENT POLICY AND A MISSION STATEMENT. EACH MUSEUM SHALL BE BOUND BY ITS  
3 COLLECTION MANAGEMENT POLICY AND ITS MISSION STATEMENT.

4 3. A MUSEUM MUST ACCESSION ALL ITEMS IN ITS POSSESSION THAT ARE  
5 CONSISTENT WITH ITS MISSION STATEMENT AND COLLECTION MANAGEMENT POLICY.

6 4. EACH MUSEUM SHALL PUBLISH A REGISTER OF THE CONTENTS OF ITS  
7 COLLECTION.

8 5. NO MUSEUM MAY DISPOSE OF AN ITEM OR ITEMS IN ITS COLLECTION EXCEPT  
9 AS SET FORTH IN THIS STATUTE AND IN ITS MISSION STATEMENT AND  
10 COLLECTIONS MANAGEMENT POLICY AND NOT UNTIL THE ITEM OR ITEMS HAVE BEEN  
11 DEACCESSIONED.

12 6. PROCEEDS FROM DISPOSAL OF AN ITEM IN ITS COLLECTION SHALL ONLY BE  
13 USED FOR PURPOSES SET FORTH IN THIS STATUTE.

14 7. NO ITEM IN A MUSEUM'S COLLECTION MAY BE USED AS COLLATERAL OR MAY  
15 BE CAPITALIZED.

16 8. A MUSEUM MAY DEACCESSION AN ITEM IN ITS COLLECTION ONLY IF ONE OR  
17 MORE OF THE FOLLOWING CRITERIA HAVE BEEN MET:

18 (A) THE ITEM IS INCONSISTENT WITH THE MISSION OF THE MUSEUM AS SET  
19 FORTH IN ITS MISSION STATEMENT;

20 (B) THE ITEM HAS FAILED TO RETAIN ITS IDENTITY;

21 (C) THE ITEM IS REDUNDANT;

22 (D) THE ITEM'S PRESERVATION AND CONSERVATION NEEDS ARE BEYOND THE  
23 CAPACITY OF THE MUSEUM TO PROVIDE;

24 (E) THE ITEM IS DEACCESSIONED TO ACCOMPLISH REFINEMENT OF COLLECTIONS  
25 AS REQUIRED BY AND/OR STATED IN ITS COLLECTION MANAGEMENT POLICY;

26 (F) IT HAS BEEN ESTABLISHED THAT THE ITEM IS INAUTHENTIC;

27 (G) THE MUSEUM IS REPATRIATING THE ITEM OR RETURNING THE ITEM TO ITS  
28 RIGHTFUL OWNER;

29 (H) THE MUSEUM IS RETURNING THE ITEM TO THE DONOR, OR THE DONOR'S  
30 HEIRS OR ASSIGNS, TO FULFILL DONOR RESTRICTIONS RELATING TO THE ITEM  
31 WHICH THE MUSEUM IS NO LONGER ABLE TO MEET;

32 (I) THE ITEM PRESENTS A HAZARD TO PEOPLE OR OTHER COLLECTION ITEMS.

33 9. ANY MUSEUM DISPOSING OF AN ITEM MUST MAKE A GOOD FAITH EFFORT TO  
34 SELL OR TRANSFER SUCH ITEM TO ANOTHER MUSEUM IN NEW YORK STATE. IF SUCH  
35 SALE OR TRANSFER CANNOT BE ACCOMPLISHED A MUSEUM MUST MAKE A GOOD FAITH  
36 EFFORT TO SELL OR TRANSFER SUCH ITEM TO ANOTHER PUBLIC MUSEUM.

37 10. PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
38 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR  
39 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE  
40 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL  
41 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
42 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.  
43 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE  
44 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED  
45 ITEM.

46 11. THE BOARD OF REGENTS SHALL ADOPT RULES OR REGULATIONS TO IMPLEMENT  
47 THE PROVISIONS OF THIS SECTION.

48 S 3. The board of regents is hereby authorized and directed to consid-  
49 er and make recommendations concerning whether museums should include  
50 buildings in their collection. Such study shall include, but not be  
51 limited to:

52 (a) The reasons for the inclusion of a building in a museum's  
53 collection;

54 (b) Criteria for determining when it is permissible to include a  
55 building in a museum's collection;

1 (c) Whether funds from the sale of disposed items can be used to care  
2 for the physical well-being of the structure and if so what limitations,  
3 if any, should there be.

4 The regents shall submit a copy of the study to the governor, the  
5 temporary president of the senate, the speaker of the assembly, the  
6 chairperson of the senate higher education committee and the chairperson  
7 of the assembly higher education committee no later than six months from  
8 the effective date of this act.

9 S 4. Paragraph (a) of subdivision 5 of section 233-a of the education  
10 law is REPEALED and a new paragraph (a) is added to read as follows:

11 (A) PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
12 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR  
13 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE  
14 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL  
15 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
16 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.  
17 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE  
18 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED  
19 ITEM.

20 S 5. Subdivision 5 of section 233-aa of the education law is REPEALED  
21 and a new subdivision 5 is added to read as follows:

22 5. PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
23 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR  
24 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE  
25 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL  
26 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S  
27 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.  
28 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE  
29 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED  
30 ITEM.

31 S 6. This act shall take effect immediately.